

Decision 05-07-034 July 21, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of IBFA Acquisition Company, LLC,
for a Certificate of Public Convenience and
Necessity to Provide Facilities-Based and Resold
Competitive and Interexchange Services in the
State of California.

Application 05-04-017
(Filed April 18, 2005)

O P I N I O N

I. Summary

This Decision authorizes IBFA Acquisition Company, LLC (IBFA) to provide resold and limited facilities-based local exchange and interexchange telecommunications services, subject to the terms and conditions set forth herein.

II. Background

IBFA is a Michigan limited liability company. Its principal place of business is located in Elk Grove Village, Illinois. In Application (A.) 05-04-017, IBFA requests a certificate of public convenience and necessity (CPCN) to provide (1) resold and limited facilities-based interexchange services statewide, and (2) resold and limited facilities-based local exchange services within the territories of Pacific Bell Telephone Company and Verizon California Inc.

III. Financial Qualifications

To obtain a CPCN to provide resold and limited facilities-based telecommunications services, an applicant must demonstrate that it has at least

\$100,000 of cash or cash equivalent to meet the firm's start-up expenses.¹ IBFA provided information which demonstrates that it meets this requirement.²

An applicant must also demonstrate that it has sufficient additional financial resources to pay all deposits required by other carriers.³ IBFA provided information that demonstrates its financial resources are more than adequate to meet the deposits required by other carriers.⁴

IV. Technical Qualifications

An applicant must demonstrate technical expertise in telecommunications or a related business. IBFA submitted information about its president, Casey Wojciechowski, that demonstrates IBFA has sufficient technical expertise.⁵ To further demonstrate its technical competence, IBFA represents that:

- Neither IBFA, nor any of its affiliates, officers, directors, partners, or owners of more than 10% of IBFA, nor any person acting in such capacity whether or not formally appointed, has been sanctioned by the Federal Communications Commission (FCC) or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.⁶
- No affiliate, officer, director, partner, or person owning more than 10% of IBFA, or anyone acting in such capacity whether or not formally appointed, held one of those positions with a telecommunications carrier that has (1) filed for bankruptcy, or (2) been found criminally or civilly liable for a violation of Calif.

¹ See Decision (D.) 95-12-056, Appendix C, and D.91-10-041.

² See IBFA supplement filed on June 15, 2005.

³ See D.95-12-056, Appendix C, and D.93-05-010.

⁴ See IBFA supplements filed on June 15 and May 27, 2005.

⁵ See A.05-04-017, Exhibit F.

⁶ IBFA admits that on two occasions it was late in submitting certain required reports to the Oregon Public Utility Commission. IBFA was not sanctioned for submitting the reports late.

Business and Professions Code § 17000 *et seq.*, or for any actions that involved misrepresentations to consumers and, to the best of the IBFA's knowledge, no such persons are currently under investigation for similar violations.⁷

V. Tariffs

Commission staff reviewed IBFA's draft tariffs contained in A.05-04-017 for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this Decision. IBFA shall correct these deficiencies in its initial tariffs filed in accordance with General Order 96-A, excluding Sections IV, V, and VI.

VI. California Environmental Quality Act (CEQA)

CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project so that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. IBFA represents that it will not construct any facilities other than equipment to be installed in existing buildings or structures for the purpose of providing telecommunications services. Therefore, it can be seen with certainty that granting A.05-04-017 will not have an adverse effect on the environment. IBFA must file for additional authority, and submit to any required CEQA review, before it constructs facilities other than equipment installed in existing buildings or structures.

⁷ See Supplement filed on May 27, 2005. A search of the Lexis data base of FCC and state utility regulatory commission decisions did not find anything that contradicts IBFA's representations.

VII. Conclusion

IBFA satisfies the Commission's requirements for obtaining the requested CPCN. Therefore, A.05-04-01 is approved, subject to the terms and conditions set forth herein.

VIII. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, the otherwise applicable 30-day period for public review and comment is waived pursuant to Pub. Util. Code § 311(g)(2).

IX. Categorization and Need for Hearings

Notice of A.05-04-017 appeared in the Daily Calendar on April 20, 2005. There were no protests or other responses to A.05-04-017. In Resolution ALJ 176-3151 dated April 21, 2005, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the record of this proceeding, we affirm that this is a ratesetting proceeding and that hearings are not necessary.

X. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Timothy Kenney is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In A.05-04-017, IBFA requests a CPCN for authority to provide (i) resold and limited facilities-based interexchange services statewide, and (ii) resold and limited facilities-based local exchange services within the territories of Pacific Bell Telephone Company and Verizon California Inc.

2. IBFA satisfies the Commission's requirements for the requested CPCN.

3. IBFA's draft tariffs appended to A.05-04-017 contain the deficiencies identified in Attachment A of this Decision. Except for these deficiencies, IBFA's draft tariffs comply with the Commission's requirements.

4. Application 05-04-017 does not request, and this Decision does not approve, the construction of facilities other than equipment to be installed in existing buildings or structures.

5. Notice of A.05-04-017 appeared in the Daily Calendar on April 20, 2005. There were no protests or other responses.

Conclusions of Law

1. This is a ratesetting proceeding.

2. There is no need for hearings.

3. It is in the public interest to approve A.05-04-017, subject to the terms and conditions set forth herein.

4. IBFA and the CPCN granted by this Decision are subject to the statutes and the Commission rules, decisions, and General Orders that pertain to California public utilities.

5. It can be seen with certainty that approving A.05-04-017 will not have any adverse impact on the environment.

6. Because A.05-04-017 is uncontested and noncontroversial, the following Order should be effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to IBFA Acquisition Company, LLC (IBFA) to provide (i) resold and limited facilities-based interexchange services statewide, and (ii) resold and limited facilities-based local exchange services within the territories of Pacific Bell Telephone Company and Verizon California Inc. The CPCN is subject to the terms and conditions set forth below

2. IBFA may not offer services until its tariffs are on file. IBFA's initial tariff filing shall (i) correct the deficiencies noted in Appendix A of this Decision, and (ii) be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI. IBFA's tariffs shall be effective one day after they are approved by the Commission's Telecommunications Division. IBFA shall comply with its tariffs.

3. The CPCN granted herein shall expire if not exercised within 12 months from the effective date of this Order.

4. IBFA is assigned the corporate identification of U-6961-C. This identification number shall be included in the caption of all original filings at the Commission and in the titles of other pleadings filed at the Commission.

5. IBFA shall comply with (i) its tariffs, (ii) all applicable rules adopted in Rulemaking 95-04-043/Investigation 95-04-044, (iii) Decision (D.) 93-05-010 and D.90-08-032, and (iv) all other applicable Commission rules, decisions, GOs, and statutes that apply to California public utilities, subject to the exemptions granted by this Decision.

6. IBFA shall comply with the rules and requirements set forth in Attachments B, C, and D of this Decision.

7. Except for equipment installed in existing buildings or structures, IBFA is not authorized to construct facilities.

8. Application 05-04-017 is closed.

This order is effective today.

Dated July 21, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

ATTACHMENT A

List of deficiencies in tariffs filed by IBFA Acquisition Company, LLC in A.05-04-017 to be corrected in its tariff compliance filing.

1. Sheet 5, Availability of Company Tariffs: Your company tariffs state that your tariffs are available for inspection at your offices in Elk Grove Village, Illinois and at the California Public Utilities Commission (CPUC). The CPUC scans all advice letters into a database that is not available for public inspection and cannot be relied upon to comply with requirements for availability of tariffs. Your tariffs must be available for inspection at an office in California.
2. Sheet 82, Taxes and Surcharges: Your tariff must state that your taxes and surcharges are in compliance with Resolution T-16901 and concur with the tariff provisions for taxes and surcharges in SBC California tariffs.

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND NON-DOMINANT INTEREXCHANGE CARRIERS

1. IBFA Acquisition Company, LLC (Applicant) shall file in this docket a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this Order.

2. Applicant is subject to the following fee and surcharges that must be regularly remitted per the instructions in Appendix E to Decision (D.) 00-10-028. The Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is zero.

- a. The current 1.55% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-16917, dated February 24, 2005, effective April 1, 2005);
- b. The current 0.30% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16817, dated February 11, 2004, effective February 11, 2004);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue (Resolution M-4813, dated December 16, 2004, effective January 1, 2005);
- d. The current 0.15% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-16916, dated February 24, 2005, effective April 1, 2005);

- e. The current 2.43% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Resolution T-16898, dated December 16, 2004, effective January 1, 2005); and
- f. The current 0.16% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-16833, dated July 8, 2004, effective August 1, 2004).

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to D.95-12-056, Appendix C, Section 4.E:

“4.E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

- (1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days’ notice. Customer notification is not required for rate decreases.
- (2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or first class mail notice to customers at least 30 days in advance of the pending rate increase.
- (3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than five (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increases.
- (4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.
- (5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.”

- (6) Contracts shall be subject to GO 96-A rules for NDIECS, except interconnection contracts.
- (7) CLCs shall file tariffs in accordance with Public Utilities Code § 876.”

4. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to Ordering Paragraph 5 of D.90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

- “5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:
- a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day’s notice.
 - b. Uniform rate reductions for existing services shall become effective on five (5) days’ notice.
 - c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days’ notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
 - d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than five (5) working days’ notice. Customer notification is not required for such minor rate increases.
 - e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.
 - f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days’ notice.”

5. Applicant may deviate from the following provisions of GO 96-A:
(a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff filings incorporating these deviations shall be subject to the approval of the Commission’s Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

6. Applicant shall file a service area map as part of its initial tariff.

7. Prior to initiating service, Applicant shall provide the Commission’s Consumer Affairs Branch with the name, address, and phone number of the Applicant’s designated contact person(s) for purposes of resolving consumer complaints. This contact information shall be updated if there any changes, or at least annually.

8. Applicant shall notify the Director of the Telecommunications Division in writing of the date that local exchange service is first rendered to the public within five (5) days after service first begins.

9. Applicant shall notify the Director of the Telecommunications Division in writing of the date interLATA service is first rendered to the public within five (5) days after service first begins, and again within five (5) days after intraLATA service first begins.⁸

⁸ California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA describes services, revenues, and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues, and functions relating to telecommunications originating and terminating within a single LATA.

10. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

11. In the event Applicant's books and records are required for inspection by the Commission or its staff, it shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

12. Applicant shall file an annual report with the Director of the Telecommunications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this Decision.

13. Applicant shall file an affiliate transaction report with the Director of the Telecommunications Division, in compliance with D.93-02-019, on a calendar year basis using the form contained in Attachment D to this Decision.

14. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

15. Within 60 days of the effective date of this Order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

16. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Telecommunications Division to file or remit late.

17. Applicant is exempt from General Order 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).

18. Applicant is exempt from Pub. Util. Code §§ 816-830.

19. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

20. If Applicant decides to discontinue service or file for bankruptcy, it shall immediately notify the Telecommunications Division's Bankruptcy Coordinator.

21. Applicant shall send a copy of this Decision to concerned local permitting agencies not later than 30 days from the date of this Order.

(END OF ATTACHMENT B)

ATTACHMENT C

ANNUAL REPORT

An original hard copy, and a machine-readable electronic copy, on a CD or floppy disk using Microsoft Word or a compatible format, shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298. The filing shall be made no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

Required information:

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.). If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. The number and date of the Commission decision granting the utility's CPCN.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.

9. A list of all affiliated companies and their relationship to the utility.
State if affiliate is:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

For questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

ATTACHMENT D

CALENDAR YEAR AFFILIATE TRANSACTION REPORT

1. Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual Affiliate Transaction report.

- Form of organization (e.g., corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (e.g., controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership);
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility shall prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart should have (i) the controlling corporation (if any) at the top of the chart, (ii) the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and (iii) all secondary subsidiaries and affiliates (e.g. a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary should be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariffed services.

4. Each annual report must be signed by an officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility’s annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5), that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT D)